

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

_____ /

Miami-Dade County Courthouse
Miami, Florida
1:38 p.m.
Monday, January 25, 1999

TRIAL - VOLUME 189

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

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WITNESS	PAGE
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PLAINTIFFS'	OFFERED	ADMITTED	FOR ID
EXHIBITS	PAGE	PAGE	PAGE

None.

E X H I B I T S

DEFENDANTS'	OFFERED	ADMITTED	FOR ID
EXHIBITS	PAGE	PAGE	PAGE

None.

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1 (Whereupon, the following proceedings were had:)

2 THE BAILIFF: All rise.

3 THE COURT: What is today?
4 THE BAILIFF: The 25th.
5 THE COURT: The 25th. Let's see what we're
6 talking about. Okay. Have a seat.
7 The clerk has just informed me that one of
8 the jurors has indicated that she has a doctor's
9 appointment for Tuesday for a test, Tuesday morning at
10 nine?
11 THE CLERK: 9:00.
12 THE COURT: Another juror has indicated --
13 I'm not sure if it's a male or female.
14 THE CLERK: Male.
15 THE COURT: A man, has indicated that on that
16 same day, which is Tuesday, the 2nd of February, he has
17 a job interview with the U.S. Customs Agency around
18 noon-ish. So if we accommodate both of them, that
19 kills the day. And we were going to take Wednesday,
20 Thursday and Friday off --
21 THE CLERK: This week.
22 THE COURT: -- of this week, and that would
23 mean come back Monday and be off on Tuesday, and that's
24 a real problem. So, the only way to handle that is we
25 work on Wednesday and they have to get Thursday and

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1 Friday off and then next Tuesday, we can handle that,
2 if we need the three days.
3 Or we don't take three days, we just take

4 Friday and Tuesday.

5 THE BAILIFF: We've got the investitures next
6 week.

7 THE CLERK: That's right.

8 THE COURT: Thursday and Friday both. Well,
9 that really shouldn't do anything to us except for that
10 one day, Thursday, where we couldn't find a courtroom
11 big enough, right?

12 THE BAILIFF: Not as yet.

13 THE COURT: 16 people.

14 THE BAILIFF: Right.

15 THE COURT: That was Thursday.

16 THE CLERK: The 4th and the 5th.

17 THE COURT: That's February. Not next week.
18 That's February 4th and 5th.

19 MR. ROSENBLATT: Next week is February. The
20 Super Bowl is Sunday, January 31st.

21 THE COURT: No, I was thinking we were
22 talking about this week, that's why we took Wednesday,
23 Thursday and Friday. That's not why.

24 The following week would be when we would
25 have to take Wednesday, Thursday, and Friday, and then

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1 if we vacate Tuesday, we've got Thursday and Friday.
2 So we would be better off working this week and not
3 taking off time and then taking those days for us next
4 week. So let's plan on doing that.

5 MR. ROSENBLATT: Although we need some time,
6 obviously, to get rulings on the depositions so that we
7 have -- I mean today --

8 THE COURT: Today is probably going to take
9 up most of the day, I guess, with the deposition. We
10 have Gertenbach, which I've already done. Have we done
11 that?

12 We haven't done that.

13 MR. ROSENBLATT: No.

14 THE COURT: And we still have this Holbrook
15 thing.

16 MR. HEIM: Well, we did a couple on Friday.

17 MR. ROSENBLATT: Yes, we did Horrigan.

18 MR. HEIM: We did Spears and Horrigan on
19 Friday. That will easily finish the day.

20 THE COURT: I'm worried about Tuesday and
21 Wednesday and Thursday.

22 MR. ROSENBLATT: That was one of the main
23 reasons we made that suggestion, because we were
24 figuring without really thinking of all these problems
25 next week, we were thinking then we would be able to

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1 just go straight through to the jury until we rest.

2 THE COURT: We're going to have that same
3 problem. We always do.

4 So I guess we'll just plan on just muddling
5 through this week rather than give them that time off.

6 And then we'll have next week to play with, which I
7 think is an easier thing to do.

8 So, give me whatever depositions you think
9 you're going to need, and I'll have to go through them.
10 Okay?

11 All right then. Let's go ahead and proceed
12 with this.

13 THE BAILIFF: Ready for the jury?

14 THE COURT: Yes, sir.

15 THE BAILIFF: Bringing in the jury.

16 (The jurors entered the courtroom.)

17 (A sidebar discussion was held off the
18 record.)

19 THE COURT: Well, okay. I keep looking at
20 you folks and apologizing for delays and all that sort
21 of business and then delays just pile up on me which
22 I'm not aware.

23 Olga tells me that somebody here has got a
24 doctor's appointment for next Tuesday at 9:00, and I
25 don't want to interfere with that. So, whoever it is

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1 that has to appear at the doctor's office -- I am
2 correct on that. Somebody has? Okay. So that's no
3 problem. You go ahead and keep your appointment.

4 And then somebody else on Tuesday afternoon
5 has got a job interview problem, right? Somebody?
6 Whoever you are?

7 Okay. I don't want to interfere. There's
8 nothing wrong with that. So I'm going to go ahead and
9 let you take care of that, so we'll be off next Tuesday
10 to accommodate you fellow jurors because I certainly
11 don't want to interfere with either of those
12 relationships.

13 So I just want you to know in advance where
14 we're going with that. And it seems that next -- not
15 this Thursday and Friday, but next Thursday and Friday
16 of February, which is the first week of February, we
17 may have to make some other arrangements also because
18 of things that are coming up that we weren't quite
19 aware of at that time.

20 So we may have a short week next week, which
21 means we've got to work this week. So, be that as it
22 may be, that's basically what's happening. And we've
23 been sitting here planning on all this sort of stuff
24 and all of a sudden bingo, we've got a change of plans.
25 So you go ahead and plan on next Tuesday being off.

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1 Okay. We are now still on the --
2 MR. ROSENBLATT: Dr. Spears, continuation.
3 THE COURT: Let's complete that. All right.
4 (Whereupon the videotape deposition of
5 Alexander Spears, Ph.D. resumed as follows:)
6 Q. I'm going to show you Plaintiffs' Exhibit 6.
7 Plaintiffs' Exhibit 6 is on the stationery of

8 Lorillard Research Center. The date of this is
9 February 17, 1977, submitted by W.E. Routh, R-O-U-T-H,
10 with several people getting copies including Minnemeyer
11 and Ms. Ireland.

12 Who is Mr. Routh, if I'm pronouncing that
13 right?

14 A. He was a research chemist at Lorillard at
15 this time period.

16 Q. Okay. Now, the very first sentence on the
17 first page says: True 85 tobacco was treated with
18 ammonium hydroxide and ammonium carbonate with and
19 without the addition of nicotine?

20 Do you remember what the purpose of that was?

21 A. No, I do not, but it's in the same time
22 period as the Minnemeyer memo that we just talked
23 about.

24 Q. Well, that was May of '76 and now we're into
25 February of '77?

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1 A. Right.

2 Q. Okay. Going to the next page, the title of
3 which is Introduction, and going down about six, seven
4 lines and quoting: As the value for the tar decreases,
5 the value for nicotine decreases. The smoker desires
6 more organoleptic effect than the low tar cigarettes
7 delivers.

8 What type of effect is that?

9 A. Taste, oral perception.

10 Q. Going down a few lines, it says: Several
11 methods of increasing the free nicotine have been
12 studied, namely the addition of free nicotine to
13 tobacco, the use of tobacco blends which have high pH
14 and high percent of nicotine, the treatment of tobacco
15 with a base, and the air dilution of cigarette smoke by
16 the use of special paper and filters.

17 So this sounds as though it's still part of
18 the overall project that we were discussing in the
19 earlier document.

20 A. It does.

21 Q. Okay. Now, I'm going to show you --

22 A. Are you finished with this?

23 Q. Yes, I'm done with that.

24 I'm going to show you Plaintiffs' Exhibit 7,
25 the title of which is on Lorillard Research Center

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1 stationery. The date of this is March 2nd, 1982. The
2 title of this report is Nicotine Migration Manipulation
3 and Mechanisms, submitted by R.W. Slavin, and Ireland
4 and Minnemeyer, among others, are reflected to be
5 receiving a copy of it.

6 You'd certainly be upset today, wouldn't you,
7 if you saw a Lorillard document referring in the same
8 sentence to nicotine manipulation?

9 A. Not in the research context, no.

10 Q. Have you been -- has Lorillard been
11 manipulating nicotine in a research context recently?

12 A. I don't know. Certainly we continue to
13 investigate all variables that we can think of with
14 respect to the cigarette, and I would not be surprised
15 if nicotine wasn't a subject of some of the work that's
16 ongoing today.

17 Q. Who is the head of research at Lorillard now?

18 A. Vello Norman.

19 Q. Now, go to the first page where the title is
20 Introduction and follow along with me:

21 During the course of 1982, two main areas of
22 research were pursued with the ultimate aim of
23 producing a cigarette with a high nicotine/CPM ratio.

24 What is the CPM?

25 A. Equivalent to tar. It stands for corrected

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1 particulate matter.

2 Q. First, efforts were made to improve and
3 further understand the process by which nicotine
4 migrates to acid impregnated media.

5 What does that mean?

6 A. What it relates to is the fact that if you
7 treat a material which is low in nicotine or a material
8 which contains no nicotine with an acid material,
9 acidic material, and place it in contact or close
10 proximity to tobacco containing nicotine, there will be

11 a migration of nicotine from one -- from the tobacco to
12 the acid impregnated material.

13 Q. Now, going down a couple of lines, it says:
14 Additionally, preliminary work was done on developing a
15 new method for determining the total distribution of
16 nicotine in mainstream, sidestream, butts and filters.
17 This was initiated in support of the migration work.

18 How is that related to the migration work?

19 A. I'm sorry. Where are you reading now?

20 Q. Still in the first paragraph.

21 A. First paragraph.

22 Q. On --

23 A. I think it related to treating the cigarette
24 paper with an acid media to determine whether or not,
25 by migrating nicotine from the tobacco to the paper,

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1 would this change the delivery of nicotine.

2 Q. Now, I thought you told me a little bit, a
3 while ago, that the research project that began in 1976
4 about augmenting nicotine was stopped after a couple of
5 years, but now we're --

6 A. I didn't say that.

7 Q. Okay. I may have misunderstood you, but it's
8 obviously ongoing in 1982, the same kind of research,
9 correct?

10 A. Not with respect to addition of nicotine and
11 that sort of thing, no. No, those were abandoned

12 approaches, as far as I know, at this point in time.
13 What's being described here is potentially another
14 mechanism of increasing nicotine-to-tar ratio.

15 That's it for this?

16 Q. Yes.

17 You've got a chart in front of you. Have you
18 seen that chart before?

19 A. Yes. I believe this is a chart that I used
20 at the Waxman hearing.

21 Q. Who at Lorillard actually prepared this
22 chart?

23 Did you?

24 A. No.

25 Q. Who did?

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1 A. This is a replica by our graphic arts
2 department, attempt to replicate what was in the
3 Surgeon General's Report, and one of our research
4 people's computation of a point or two out here beyond
5 that data set which did not go out as far as this.

6 Q. In general, this chart -- and, by the way,
7 when you were testifying in front of Congress, the
8 blowup was how big; do you remember?

9 A. No, it was -- it was a blowup. The starting
10 point was the Surgeon General's Report, which is a
11 normal page size or smaller than this considerably, and
12 that's in reference to the 1957 to 1987 period is

13 supposed to be representative of what is in the Surgeon
14 General's.

15 To that degree, that's the representation,
16 and points '88 to 1990 were computed by -- from similar
17 data, that is, the Maxwell reports on sales of
18 individual packings and the FTC reports on tar and
19 nicotine.

20 Q. Plaintiffs' Exhibit 9, which is --
21 Plaintiffs' Exhibit 9 is on the stationery of the
22 United States House of Representatives Committee on
23 Energy and Commerce, Subcommittee on Health and the
24 Environment, Majority Staff Analysis of Chemical and
25 Physical Criteria for Tobacco Leaf of Modern Day

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1 Cigarettes by A.W. Spears and S.T. Jones, Lorillard
2 Tobacco Company, 1981.

3 What is this document?

4 A. I've not seen it before. I assume it's what
5 it's purported to be by the title.

6 Q. My understanding is that this document was
7 shown to you at a deposition you gave in this case in
8 August of 1994.

9 A. If it was, I don't recall it.

10 Q. Okay. On the first page, second paragraph,
11 quoting: Contrary to the industry's congressional
12 testimony, the 1981 report by Mr. Spears found a trend
13 toward increasing nicotine over time in the lowest tar

14 cigarettes. According to the Spears' report, the
15 increase in nicotine concentration in the lowest tar
16 cigarettes was caused at least in part by the selection
17 of tobacco, specifically by blending practices
18 utilizing a tobacco blend which is significantly higher
19 in nicotine.

20 Did they get that wrong?

21 A. Yes. I did not provide any testimony that
22 says -- said anything about tobacco and concentration
23 of nicotine in tobacco. What I testified to was the
24 tar and nicotine in the smoke, and that was the whole
25 basis of the contention and disagreement and

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1 misunderstanding or whatever we want to call it that
2 has occurred between this committee and myself.

3 My testimony refers to smoke nicotine and the
4 1981 article clearly refers to tobacco nicotine, and
5 the staff has made a significant error in equating the
6 two, and I've pointed that out repeatedly as I did
7 earlier today.

8 Q. Tobacco nicotine is the nicotine the smoker
9 takes in as he inhales the cigarette?

10 A. Of course. But how much he inhales is
11 determined by the filter and the ventilation and how
12 much tobacco is in the cigarette, along with the amount
13 of nicotine in the tobacco.

14 The main point is that the -- the major

15 determinate in these low tar nicotine cigarettes in
16 terms of smoke delivery is not the amount in the
17 tobacco. It's the filter, the presence of the filter,
18 and the ventilation that controls the amount that is
19 delivered, and that is exactly the finding of Neal
20 Benowitz in his paper.

21 There is no correlation between the amount of
22 nicotine found in the tobacco and the amount found in
23 smoke. Absolute confirmation to what I said in the
24 article which was handed to me by Mr. Waxman and his
25 staff.

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1 Q. Smoke nicotine is what?

2 A. FTC nicotine as measured by smoking the
3 cigarette. The same way you measure tar, you measure
4 nicotine. That is different than measuring nicotine in
5 the leaf tobacco or in the tobacco end of the
6 cigarette.

7 Q. And you're saying that the committee and
8 Mr. Waxman and Mr. Hilts just couldn't grasp that?

9 A. Couldn't or didn't want to, because it didn't
10 suit their concept.

11 Q. Obviously people smoke differently in terms
12 of how they drag, how deeply they drag, whether they
13 cover the filter or the air holes with their fingers as
14 they smoke, correct?

15 A. I don't believe there's any significant

16 amount of coverage of the air holes unless you do it
17 purposely. The rest of your statement is correct.

18 Q. Now, Page 4 of this report, contention, under
19 Roman Numeral III, they refer to you as Mr. Spears:
20 Mr. Spears' 1981 report contradicts two central
21 contentions made by the tobacco industry in testimony
22 before the Health and the Environment Subcommittee.
23 Contention: Nicotine levels are a function of tar
24 levels. When tar levels are set, nicotine levels
25 follow tar.

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1 And then the next paragraph is the 1981
2 report, which is your report, correct?

3 A. That's correct.

4 Q. The 1981 report directly contradicts this key
5 industry point. The 1981 report specifically finds
6 that nicotine does not follow tar levels in the case of
7 brands of cigarettes that are very low in tar. These
8 very low tar cigarettes have a significant difference
9 in nicotine level compared to other brands of
10 cigarettes. They show a trend toward increasing
11 nicotine over time. In fact, the 1981 report shows
12 that the very lowest tar cigarettes actually have the
13 highest nicotine concentrations, the exact opposite of
14 the industry's contention.

15 And you're telling us that's wrong?

16 A. Yes. I'm just saying the same thing restated

17 incorrectly. The 1981 report has nothing to do with
18 smoke nicotine, FTC nicotine, FTC tar, other than to
19 group the brands that I was talking about. I think I
20 grouped them as ultra, ultra low and low, or something
21 like that.

22 Q. Well --

23 A. And it showed that in the ultra low category,
24 the concentration of nicotine in tobacco was higher in
25 the ultra low tar and nicotine smoke nicotine brands.

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1 This persists in taking that out of context
2 and calling it smoke nicotine. It's not so in the '81
3 report. It's not so in my testimony, and this is
4 wrong.

5 Q. How come in the various memorandums that
6 we've been over there's never any mention of smoke
7 nicotine?

8 A. You mentioned tar and you mentioned nicotine
9 with it, they're both by virtue of smoke.

10 Q. By smoke, you mean when the person exhales?

11 A. I mean, when a person -- what you get with a
12 smoke machine under what is reported by the Federal
13 Trade Commission, tar and nicotine, that's smoke. No
14 one reports nicotine in tobacco on any routine basis.
15 Outside of the tobacco industry, I think there's been
16 little data on how much nicotine is in the leaf other
17 than by industry-generated data.

18 Q. So the difference between FTC nicotine and
19 real nicotine is what?

20 A. FTC nicotine is nicotine determined by
21 smoking the cigarettes under their standard smoking
22 machine procedures.

23 Q. Not real people, machines?

24 A. Of course they're machines. The other
25 nicotine we're talking about has nothing to do with

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1 people at all either. It doesn't even smoke the
2 cigarette. You're talking about a measurement on the
3 tobacco.

4 Q. What was the purpose of writing that paper in
5 1981? What were you conveying?

6 A. It was an invited paper.

7 Q. Invited by who?

8 A. I forget. Maybe the University of Kentucky.
9 No, it was an invited paper to Tobacco Chemist Research
10 Conference, and it was invited as a symposium paper,
11 and it was part of a symposium that related to trends
12 in modern day cigarettes or something like that, and my
13 paper was related to the trends that are described in
14 that paper that I saw, and the trends that were
15 described were that these very low tar and nicotine
16 cigarettes, as measured by Federal Trade Commission,
17 had a little more nicotine in the tobacco.

18 I then speculated on how that might be

19 achieved in that paper, which is another section that
20 was read to me earlier about use of stems and
21 reconstituted sheet and so forth.

22 Then there was a comment about research that
23 was going on that could conceivably have some influence
24 on the industry in the future, and that was some of the
25 attempts to genetically modify tobacco to contain

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1 higher concentrations of nicotine.

2 So, it was a general overview of trends that
3 I saw in modern day cigarettes.

4 Q. In 1981, at the time of your paper, the
5 research department of Lorillard was actively engaged
6 in researching nicotine augmentation; is that correct?

7 A. In '81, they were still doing work, yes.

8 Q. Plaintiffs' Exhibit 10, this is a Lorillard
9 memorandum from you to Mr. C.H. Judge.

10 A. Right.

11 Q. Do you remember this?

12 A. Yes.

13 Q. June 24, 1974. It just says: Confidential
14 from A.W. Spears to Mr. C.H. Judge.

15 It doesn't have a title that I can see.

16 A. It's a brief overview of smoking and health
17 related programs that the industry was either
18 sponsoring or had some participation in at this time.

19 Q. Now, why would this document be marked

20 confidential? I mean, presumably all your in-house
21 memos would be confidential, wouldn't they?

22 A. I don't -- I don't know who marked it
23 confidential, but if it was for the -- oh, I see.

24 If it was sent to Judge, then the intent was
25 that he should be the reader of the document.

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1 Q. And only he?

2 A. Not his administrative assistants and so
3 forth.

4 Q. Okay. Your very first sentence says: Before
5 attempting to discuss CTR, the Council for Tobacco
6 Research, a brief review of the organization's
7 contributing to research and to tobacco and health
8 seems to be appropriate?

9 Now, Item Number 13.

10 Okay. Now, what program are you referring to
11 in 13 when you say: The program is primarily aimed at
12 seeking alternate hypotheses of disease causation?

13 A. I think that was my view of some of the
14 special project work at that time that we referred to
15 earlier.

16 Q. So the special project work is primarily
17 aimed at seeking alternative hypotheses of disease
18 causation?

19 A. At that time.

20 Q. Okay. Now, what you are saying in 13 is that

21 most of the epidemiological research tries to establish
22 that cigarette smoking causes disease, and the special
23 project program is primarily aimed at seeking other
24 theories of disease causation other than cigarette
25 smoke?

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1 I mean, that's how I interpret that, as your
2 statement. Is my interpretation correct?

3 A. I'm not sure I followed the first part of
4 that. But what this means to me is that those
5 projects, being advocated by the ad hoc committee under
6 the category of special projects, principally were at
7 that time primarily epidemiological in nature and that
8 they were aimed at seeking alternative hypotheses for
9 disease causation.

10 Q. Alternative to --

11 A. Alternative to cigarette smoking.

12 Q. As the cause of disease?

13 A. Correct.

14 Q. Okay. Now, going down -- going down to the
15 bottom of this same page, the third paragraph from the
16 bottom: Some time ago in 1970, the CTR program was
17 evaluated by the research directors. At that time it
18 was felt that the desired aims of the CTR program could
19 be stated as, Number 1, to define the effects of
20 cigarette smoke on the human system; Number 2, to
21 conceptualize and explore other hypotheses relative to

22 the smoking and health question by epidemiological and
23 other appropriate methods.

24 And, once again, when you're talking about
25 other hypotheses relative to the smoking and health

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1 question, other hypotheses other than cigarette smoking
2 being the cause of disease?

3 A. Yes. I think that's correct.

4 Q. Okay. Now, the program referred to -- when
5 you say: Some time ago in 1970 --

6 A. Where are you now?

7 Q. The --

8 A. Okay. Back on --

9 Q. Yes. The CTR program was evaluated by the
10 research directors. That's the same program you're
11 referring to in 13 above when you say: The program is
12 primarily aimed at seeking alternative hypotheses of
13 disease causation?

14 A. No. It's not the same program.

15 Q. Because the program in 13 is specifically
16 special project?

17 A. That's correct.

18 Q. Okay. On Page 3, the bottom paragraph,
19 follow along with me: Historically, the joint-industry
20 funded smoking and health research programs have not
21 been selected against specific scientific goals but
22 rather for various purposes such as public relations,

23 political relations, positioned for litigation, et
24 cetera.

25 Thus, it seems obvious that reviews of such

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1 programs for scientific relevance and merit in the
2 smoking and health field are not likely to produce high
3 ratings.

4 In general, these programs have provided some
5 buffer to public and political attack of the industry
6 as well as background for litigious strategy. However,
7 the public and political attitude towards smoking has
8 seriously decayed with respect to the tobacco industry,
9 and scientific and political attack has become intense
10 with efforts at forced product modification underway.

11 Thus, we see the litigation threat of much
12 lesser importance than that of legislative and public
13 acceptance of cigarette smoking. This suggests that
14 goals should be defined more on the basis of scientific
15 aspects, public relations, and the programs leading to
16 such goals coordinated more by business and scientific
17 management.

18 Now, have I read that correctly?

19 A. Yes.

20 Q. And what are you basically saying here?

21 A. This is an overview of all of the industry's
22 related -- industry and related research activities
23 being funded, I think, either by the industry or by

24 government entities, and this document is an overview
25 of it with the suggestion that these programs are not

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1 well coordinated.

2 In my view at this time, there was
3 duplication, and there was not careful selection of
4 projects to avoid duplication to assure ourselves that
5 we had, in my judgment, the highest level that we could
6 have in terms of highest level of quality of research.
7 All of these things, I think, are kind of summarized in
8 this statement that you just read.

9 Q. Okay. And basically, what you're saying is
10 that the organizations and the public health agencies
11 that are attacking the cigarette industry basically
12 seem to be winning the battle, and you want to
13 coordinate the programs to fight them, fight back more
14 effectively?

15 A. Not fight back, but this is a time period
16 that there was a tobacco working group ongoing which
17 was looking at product modification potentially. This
18 was a time period when I think there was nothing
19 outside of that tobacco working program that was
20 directly related to product modification other than in
21 the industry laboratories.

22 Okay. Other than the work that was going on
23 within the various industry laboratories. Also, there
24 are numerous organizations listed here that were

25 investigating smoking and health questions, namely

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1 Harvard, Washington University, UCLA, so forth, again,
2 no direct coordination of any of these activities. And
3 this memorandum was basically calling for an effort to
4 coordinate a lot of the different research activities
5 so that there would be a reduced duplication and more
6 efficient expenditures of money.

7 This was not an effort, as you suggest, to
8 fight back against the health organizations that were
9 generating information, but simply to conduct an
10 efficient R&D program, and that's, I think, suggested
11 on the next page of this document where I was
12 suggesting a way in which this might be done.

13 Q. Well, when you talk about an efficient
14 research and development program in the paragraph I
15 read earlier, you're talking about politics, you're
16 talking about public relations, you're talking about
17 many things that certainly have nothing to do with pure
18 scientific research; isn't that correct?

19 A. Well, the research is the basis, I think, of
20 good public relations. I think research is the basis
21 of political attitude and so forth, and I was calling
22 for, I think, a highly coordinated, efficient,
23 productive, targeted program.

24 Q. To change the overall negative perception of
25 the American public and the media and the scientific

1 community toward the tobacco industry, right?

2 A. That would be part of the outcome of a good
3 research program, yes.

4 Q. Now, in a statement I read earlier, you know,
5 your words: However, the public and political attitude
6 towards smoking has seriously decayed with respect to
7 the tobacco industry, what do you attribute that to?

8 A. Basically statements that were being made by
9 some of the public health folks, statements that were
10 being made by the media, and a lack of public response
11 from the industry.

12 Q. Now, you make a suggestion on Page 4, in the
13 fourth paragraph: It is suggested that Council for
14 Tobacco Research be combined with the Tobacco Institute
15 administratively and that an industry committee, along
16 with the staff of the institute and CTR, be designated
17 to help define programs.

18 Was your suggestion ever carried out to that
19 effect?

20 A. No, it was not.

21 Q. What has been your connection with the
22 Tobacco Institute?

23 A. None, until I became a member of the
24 executive committee and its board of directors.

25 Q. Does that relationship continue up to the

1 present time?

2 A. Yes, it does.

3 Q. Is the Tobacco Institute a trade association?

4 A. That's my understanding, yes.

5 Q. And it's designed to accomplish what?

6 A. It is basically a lobbying organization in
7 Washington, D.C. and coordinates some of the
8 state-related issues that involve legislation.

9 Q. Is it fair to characterize the Tobacco
10 Institute as the spokesman generally for the individual
11 tobacco companies?

12 A. Well, it certainly speaks for some of its
13 members. However, some members have other
14 spokespersons. So it's not the sole spokesperson.

15 Q. Is the Council for Tobacco Research a trade
16 association?

17 A. I would not characterize it that way.

18 Q. In terms of your official position with the
19 Council for Tobacco Research, are you familiar with how
20 it characterizes itself on its federal income tax
21 returns as to the type of entity it is?

22 A. I was made aware of that in a deposition.
23 Until that point, I was unaware of it.

24 Q. So, as you sit here today, you don't know one
25 way or the other whether the Council for Tobacco

1 Research identifies itself as a trade association in
2 its federal income tax returns?

3 A. I don't know, but it certainly doesn't
4 represent itself in that way. It represents itself as
5 a grant/funding organization for research purposes

6 Q. Now, what number are we up to? 11,
7 Plaintiffs' Exhibit 11. This exhibit is entitled,
8 Motives and Incentives in Cigarette Smoking, William L.
9 Dunn, Junior, Philip Morris Research Center, Richmond,
10 Virginia.

11 Is this a document you're familiar with?

12 A. I believe I've seen it before, yes.

13 Q. Now, this document refers to a St. Martin
14 conference being called the Council for Tobacco
15 Research.

16 Were you at that conference?

17 A. I was at a conference in St. Martin, yes.

18 Q. Okay. Now, on Page 3, in the second
19 paragraph, the document says: The St. Martin
20 conference was called by the Council for Tobacco
21 Research U.S.A. in an effort to goad the scientific
22 community into having another go at the problem.

23 What problem is being referred to?

24 A. I don't know.

25 Q. What was the subject of the St. Martin

1 conference which you attended?

2 A. Smoking motivation and behavior.

3 Q. But before I get to that, who is William L.

4 Dunn, Junior?

5 A. He was a scientist at Philip Morris.

6 Q. How high up in the chain was he?

7 A. I don't know.

8 Q. You don't know what his title was?

9 A. I don't know what his title was.

10 Q. Okay. Now, on Page 4, the second full

11 paragraph: The majority of the conferees would go even

12 further and accept the proposition that nicotine is the

13 active constituent of cigarette smoke. Without

14 nicotine, the argument goes, there would be no smoking.

15 Some strong evidence can be marshalled to support this

16 argument?

17 Do you agree with what I've just read?

18 A. I don't know. He's reporting on what he

19 believed the conferees said at the conference.

20 Q. Do you accept that, that nicotine is the

21 active constituent of cigarette smoke?

22 A. Nicotine is an important constituent of

23 cigarette smoke. If you mean active by

24 pharmacologically active, yes, it has some

25 pharmacological effects.

1 Q. Do you agree with his statement: Without
2 nicotine, the argument goes there would be no smoking?

3 A. Well, we discussed that earlier, and I don't
4 think there's much to support that. Only one instance
5 that I'm aware of that a cigarette was made without --
6 a tobacco cigarette was made without nicotine.

7 Q. Well, isn't that a tremendous amount of
8 evidence to support the statement that, without
9 nicotine, there would be no smoking, since there has
10 never been a successful commercial cigarette that
11 didn't contain any nicotine?

12 A. I don't think there's ever been except one
13 commercial cigarette to base that on, and it was only a
14 test market.

15 Q. But all the cigarettes that are successful
16 contain nicotine. Therefore, isn't his statement
17 accurate that, without nicotine, there would be no
18 smoking?

19 A. No, because that is a presumption that
20 follows the idea that if you had cigarettes with no
21 nicotine, there would be no smoking, and there is no
22 direct evidence of that because there are no cigarettes
23 out there that don't have nicotine.

24 Q. Well, isn't the reason for that the fact that
25 people in your position know that a cigarette without

1 nicotine would be an abysmal commercial failure?

2 A. I don't think we know that.

3 Q. You kind of suspect that?

4 A. No, I don't know. But I have said that

5 nicotine is important, clearly, but I'm not ready to

6 say that there would be no smoking if there were

7 cigarettes without nicotine. It doesn't follow.

8 Q. He says: Some strong evidence can be

9 marshalled to support this argument. Number 1, no one

10 has ever become a cigarette smoker by smoking

11 cigarettes without nicotine. Now, that's a true

12 statement, isn't it?

13 A. Yes, because they had no choice.

14 Q. Okay.

15 A. But I don't think it's an argument in support

16 of his above hypothesis.

17 Q. Number 2, most of the physiological responses

18 to inhaled smoke have been shown to be nicotine

19 related; is that true?

20 A. That's true. The question is: How important

21 are they?

22 Q. Now, in Number 3, his first sentence says:

23 Despite many low nicotine brand entries into the

24 marketplace, none of them have captured a substantial

25 segment of the market.

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1 A. That's true, but those are also cigarettes
2 that have very low tar delivery and very low taste, so
3 they're not simply a low nicotine. They are low tar
4 and nicotine. So we have two important characteristics
5 in terms of the acceptance of a cigarette, bearing at
6 the same time. They are bearing together.

7 Q. And then on Page 5, Mr. Dunn, in the second
8 paragraph, goes on to say: The cigarette should be
9 conceived not as a product but as a package. The
10 product is nicotine. The cigarette is but one of many
11 packaged layers. There is the carton, which contains
12 the pack, which contains the cigarette, which contains
13 the smoke. The smoke is the final package. The smoker
14 must strip off all these package layers to get to that
15 which he seeks.

16 Now the paragraph that I've just read, isn't
17 that truly the bottom line of what the tobacco industry
18 is all about? Get the nicotine to the customer, and if
19 he is satisfied with the nicotine content, he can
20 become a life-long customer, and obviously that's good
21 for business?

22 A. No, I don't think that's quite right. I
23 understand what he's saying, and he has his own view on
24 this, and that, I think, is an innovative way to put
25 this to the reader, but I think there is certainly

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1 information that nicotine is an important component of

2 tobacco and tobacco smoking. Whether it is the sole
3 reason that people smoke I think is not true.

4 I mean, after all, remember that nicotine
5 patches and nicotine gum are supplying nicotine and yet
6 people continue to smoke cigarettes. So if they
7 continue to smoke cigarettes when they have
8 supplemental sources of nicotine, to me, that's
9 satisfactory evidence that nicotine is not the sole
10 reason that people smoke.

11 Q. Well, isn't the sole purpose of those
12 products to wean people off cigarette smoking slowly,
13 gradually?

14 A. It's the only instance that I'm aware of that
15 you would give the so-called drug to wean people away.
16 You don't do that with heroin. You don't do that with
17 cocaine. Very strange in terms of an approach, if this
18 is truly an addictive drug, and I think that that shows
19 the ludicrous nature of it. You don't supplement or
20 give people cocaine to wean them off of cocaine.

21 Q. Have you ever heard of methadone?

22 A. Sure, but that's not cocaine.

23 Q. What's the purpose of methadone?

24 A. Methadone?

25 Q. Yes.

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1 A. The purpose is to try to block the active
2 sites that lead to the addiction of the cocaine.

3 Q. Did you or anybody else in the tobacco
4 industry ever repudiate this document from Mr. Dunn?

5 A. I've never seen the document until long after
6 that time frame when he wrote it.

7 Q. When is the first time you saw this document?

8 A. I'm not sure whether I saw this -- whether I
9 saw this in one of the early cases in which I testified
10 or we provided a deposition in. It may have been.

11 Q. Is Dunn a Ph.D.?

12 A. Yes.

13 Q. In what?

14 A. I believe psychology.

15 Q. Now, he goes onto say on Page 5: Think of
16 the cigarette pack as a storage container for a day's
17 supply of nicotine. It is unobtrusively portable. Its
18 contents are instantly accessible. Think of the
19 cigarette as a dispenser for a dose unit of nicotine.

20 He's just telling it like it is, isn't he?

21 A. He is verbalizing something for whomever he
22 wrote the memo.

23 Q. Well, who did he write it for?

24 A. I don't -- does it say? No. I don't know to
25 whom he addressed this.

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1 Q. In terms of the various meetings you attended
2 during the St. Martin conference, were any of these
3 kind of views expressed either by Dunn or by anybody

4 else?

5 A. If they were, I didn't hear them.

6 Q. Didn't William Dunn actually write a book
7 incorporating these views?

8 A. He edited a book which was basically a
9 compilation of papers that were given at the conference
10 as I recall. I don't remember this particular view
11 being in the book, but he does go on to say some other
12 interesting things here in this memo.

13 Q. In the middle of Page 6, Dr. Dunn says:
14 Smoke is, beyond question, the most optimized vehicle
15 of nicotine and the cigarette the most optimized
16 dispenser of smoke.

17 Do you agree with that statement?

18 A. Today, no, I would say that the nicotine gum
19 and the nicotine patch are certainly the more optimized
20 dispensers of nicotine.

21 Q. When you take this document as a whole, at
22 least from Dr. Dunn's perspective, is it a fair
23 characterization -- the title of this document is,
24 Motives and Incentives in Cigarette Smoking, and Dunn
25 is saying over and over again the motive, the incentive

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1 in cigarette smoking is nicotine, nicotine, nicotine,
2 and anything else and everything else is trivial in
3 comparison to nicotine.

4 You may not agree with that, but isn't that

5 what he's saying?

6 A. Well, I think he modifies by what he's saying
7 here on Page 6, which says: Least anyone be made
8 unduly apprehensive about this drug-like
9 conceptualization of the cigarette, let me hasten to
10 point out that there are many other vehicles of
11 sought-after agents which dispense in dose units. Wine
12 is the vehicle and dispenser of alcohol. Tea and
13 coffee are the vehicles and dispensers of caffeine.
14 Matches dispense doses of heat. And money is a storage
15 container, vehicle and dose dispenser of many things.

16 To me, what he's done here is simply find a
17 clever way or what he's considered a clever way to talk
18 about nicotine in the cigarette. I don't think it says
19 much of anything beyond that.

20 Q. Well, then, another -- go ahead.

21 A. And he points out how he applies this same
22 concept to a whole bunch of different things, and to
23 me, so what? So a match is a dispenser of heat. Money
24 is a dispenser of many things. It's a container. I
25 mean, he seems to be just using nice adjectives and has

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1 framed this in a way that is appealing to him as a
2 writer, anyway.

3 (The videotape was paused, and the following
4 proceedings were had:)

5 (Discussion off the record.)

6 THE COURT: Do you all need a break?
7 THE JURORS: Yes.
8 THE COURT: Okay. Go ahead. Take a break.
9 All right. What do we have to discuss?
10 MR. HEIM: We're just trying to work some
11 problem out with the tape. We'll show you in a minute.
12 THE COURT: Okay.
13 (The jurors exited the courtroom.)
14 THE COURT: Is there something I can help you
15 with?
16 MR. HEIM: Yes, we'll show you the problem,
17 Judge. We can work it out.
18 We don't need this on the record.
19 (Discussion off the record.)
20 THE COURT: Leave it in.
21 MR. ROSENBLATT: Leave it in.
22 THE COURT: Because the other objection is
23 you're arguing with the witness, so leave it in. Let's
24 take a few minutes. But I think --
25 MR. HEIM: Leave it all in.

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1 THE COURT: Just let it run.
2 THE VIDEOGRAPHER: Okay.
3 THE COURT: Because the answer overpowers the
4 side comment.
5 (Recess)
6 THE BAILIFF: All rise.

7 THE COURT: Okay. Everybody here that's
8 supposed to be here? Mr. Heim is not here.
9 MR. NEWSOM: He should be back in just a
10 moment.
11 THE COURT: All right. We'll wait for him.
12 You all may be seated. Thank you.
13 I'm having so much fun. I'm having so much
14 fun reading this stuff.
15 (Discussion off the record.)
16 THE COURT: Okay. Now we can get the jury
17 out.
18 THE BAILIFF: Okay. Mr. Heim is back.
19 MR. HEIM: Sorry.
20 THE COURT: See how important you are.
21 MR. HEIM: All right.
22 THE BAILIFF: Bringing in the jury.
23 (The jurors entered the courtroom.)
24 THE COURT: All right. Everybody here? I
25 guess we can resume.

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1 (The videotape resumed as follows:)
2 Q. Your view is that any normal individual, even
3 if they're a three-pack-a-day smoker for 35 years, can
4 stop smoking on a dime without any problems, without
5 any significant problems if they make up their mind to
6 do so, and if they can't do that, they ain't normal,
7 something's the matter with them?

8 A. An individual who is a gambler who spends his
9 last money gambling, gambles away the paycheck, puts
10 his family in a sacrifice financially, severe
11 sacrifice, will not stop gambling, is that an
12 addiction?

13 Q. Absolutely.

14 A. The answer is absolutely no, it is not an
15 addiction.

16 Q. Absolutely it is.

17 You're the CEO and president of Lorillard.
18 Your paramount concern is profitability, correct?

19 A. That is not correct.

20 Q. Is your paramount concern the health of
21 American people?

22 A. That is a very important concern. I've told
23 you that, that our customers, our shareholders, the
24 community in general, that includes the health. These
25 are all concerns.

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1 Q. And 43 years after, 43 years after the
2 tobacco industry, Lorillard included, promised the
3 American public that you were going to spend millions
4 researching the question as to whether cigarette
5 smoking causes disease, 43 years later, on April 15,
6 1997, you're sitting in a conference room in New York
7 City telling us that after millions and millions of
8 dollars and 43 years, you are back where you were in

9 1954 saying: It may cause disease, and maybe it
10 doesn't cause disease.

11 Doesn't that embarrass you?

12 A. I would say that your mischaracterization
13 embarrasses me. We're not back 40 years ago. There
14 has been major advances in science and there have been
15 major advances in understanding of the diseases that
16 are associated with smoking.

17 To say we're back 43 years ago is
18 preposterous. We are in today's environment. We have
19 a much greater understanding, but we certainly do not
20 have the understanding to say that smoking is a cause
21 of these diseases.

22 As for your statement about your definition
23 of addiction a minute ago, that gambling is an
24 addiction, that does not come under any of the
25 definitions of addiction that I'm aware of.

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1 In terms of the reasonable definition I gave
2 you is certainly not there and I don't think it's there
3 under any of the others in terms of Surgeon General
4 Reports.

5 Q. How have I mischaracterized your testimony
6 when you have told us throughout this deposition today
7 on the issue of causation that cigarette smoking may
8 cause lung cancer and other diseases and maybe it
9 doesn't? Is that a correct or incorrect

10 characterization of your testimony on causation?

11 A. My testimony on causation is that we do not
12 know whether smoking causes these related diseases.
13 That doesn't mean that it doesn't. We just don't know
14 in terms of the information that is available to us
15 today.

16 Q. On that --

17 A. We are not back 40-some years ago in terms of
18 our state of the knowledge.

19 Q. On that limited specific direct issue, how is
20 that any different from what the tobacco industry was
21 saying in 1954 as to whether it knew or didn't know
22 whether cigarette smoking caused disease?

23 A. In 1954, there was no replicated
24 epidemiological studies that showed a consistent
25 association with disease. There was one significant

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1 study at that time as I recall. The rest was
2 anecdotal-type evidence. That has changed. There have
3 been repeated epidemiological studies, and smoking has
4 been consistently associated in these studies with a
5 disease.

6 And I've indicated to you that I accept that
7 association as valid scientific work, but that alone
8 does not prove causation. And to make the next step,
9 there is required information, and I indicated what
10 that would be. It would be animal inhalation

11 experiments that showed tumors that occur in human
12 beings or the understanding of the mechanism of disease
13 where one could explain the interaction of tobacco in
14 that mechanism or tobacco smoking.

15 Q. Do you agree with this statement: People get
16 all kinds of levels of nicotine out of a cigarette
17 depending on how they smoke it. It is not a regulated
18 dose at all?

19 A. Within a certain range, yes, I agree with
20 that. It's not a metered dose as Dunn suggested.

21 Q. So, depending upon the way a person smokes, a
22 person could smoke a low-tar cigarette and get away
23 more nicotine?

24 A. Sure. If you don't inhale one and you inhale
25 the other, you get more nicotine. Or if you take one

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1 puff and put it out versus smoking the whole cigarette
2 or if you smoke two cigarettes and not one, there are
3 all kinds of ways to get different doses.

4 Q. Are there any measurements on that, that
5 kind --

6 A. Of what?

7 Q. Nicotine that people actually get into their
8 bodies as opposed to smoking machines?

9 A. Short-term, yes.

10 Q. Explain.

11 A. The only methods of making that measurement

12 are to measure nicotine in the bloodstream and nicotine
13 metabolites in the blood and better in the urine
14 collected over a 24-hour period as the two methods.
15 They both have problems in being very accurate in that
16 nicotine disappears rather quickly from the bloodstream
17 and it can only be representative of the last few
18 cigarettes that the individual smoked.

19 And cotinine, which is a metabolite, does
20 stay around for a number of days in terms of half life.
21 However, people metabolize nicotine in different ways
22 so the measure of the metabolites is not a very
23 quantitative method of looking at exposure.

24 But within those kind of limitations, you can
25 make those measurements.

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1 Q. Now, this is a meeting of scientific
2 directors in February 1968. The following individuals
3 with indicated organizations met in Hilton Head, South
4 Carolina, for a two-and-a-half-day meeting, and
5 according to this document, you were present --

6 A. That's correct.

7 Q. -- is that correct?

8 A. That's correct.

9 Q. And then in addition to the scientific
10 directors, a lawyer from the firm of Covington &
11 Burling was present at all the sessions; is that
12 correct?

13 A. That's what it says.

14 Q. Okay. Do you remember that? Do you remember
15 this meeting?

16 A. Generally, but I don't recall if this was the
17 attorney that was present or not, but we would have had
18 independent counsel to avoid antitrust potential
19 issues.

20 Q. Now, on the first page, the second paragraph
21 from the bottom: Our primary purpose was to discuss
22 the scientific aspects of the problems facing the
23 tobacco industry with specific emphasis on tobacco and
24 health. If a consensus could be reached on this point,
25 we were to discuss an attempt to reach a consensus as

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1 to an acceptable way to attempt to solve these
2 problems.

3 Solve what problems?

4 Isn't the problem that's being addressed the
5 problem from the tobacco industry's standpoint of the
6 American public's perception that smoking was hazardous
7 to their health?

8 That was the problem the tobacco industry
9 faced?

10 A. Well, I'm trying to recall what the problem
11 was. I think the problem was how to conduct or if
12 there was a way to be more efficient in the kind of
13 research that was being conducted in the area of

14 smoking and health.

15 Q. Can you think of any document other than A
16 Frank Statement to Cigarette Smokers, which was a
17 collective document paid for by basically all the major
18 tobacco companies and published during a given month in
19 every major newspaper in America?

20 My understanding is that The Frank Statement
21 is unique in that respect. What's your understanding?

22 A. I'm not aware of any other document by this
23 industry, no.

24 Q. When were Kent micronite filters being
25 advertised by Lorillard?

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1 A. Kent used the term micronite filter from the
2 early '50s until I believe somewhere in the 1980s. The
3 term micronite was used in connection with that
4 cigarette filter.

5 Q. And at one time weren't those filters
6 advertised as the greatest health protection ever
7 developed for smokers?

8 A. This was back in the 1950s, yes.

9 Q. That wasn't true, was it?

10 A. I think that the data that they had to
11 support that statement was true. They thought it was
12 true at the time, and they had generated -- Lorillard
13 scientists and outside scientists had generated a
14 battery of information and biological tests that led

15 them to that conclusion.

16 Q. Subsequently learned it was incorrect?

17 A. I would say yes, but certainly it's
18 documented with respect to making that claim at that
19 time.

20 Q. According to the Centers for Disease Control
21 and according to many public health organizations, you
22 will agree that they accept as a given their statement
23 that cigarette smoking kills approximately 450,000
24 Americans every year?

25 I know you don't agree with that, but that's

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1 their figure, correct?

2 A. That is a figure that they have calculated,
3 yes.

4 Q. You've read that many times in many different
5 places?

6 A. The number bounces around.

7 Q. Well, it bounces around between 425,000 and
8 450,000 and has basically been in that range for the
9 past decade at least?

10 A. Oh, I think it bounces around more than that.
11 I've seen 300 to 500.

12 Q. Okay. And you would agree that in terms of
13 the various public health organizations, that figure is
14 accepted and repeated?

15 A. It's a P.R. statement that they make.

16 Q. A P.R. statement?
17 A. Yes.
18 Q. In what sense?
19 A. It's a sound bite that's used in the media.
20 Q. Have you not seen, Dr. Spears, many articles
21 written by many prominent physicians which have
22 appeared in the most learned journals in this country
23 such as The New England Journal of Medicine wherein the
24 body of the article when the authors and the
25 researchers are talking about a given study and they

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1 give background, that this figure appears, that
2 cigarette smoking kills approximately 450,000 Americans
3 every year?
4 A. When it appears, it's usually in the
5 introduction of the article.
6 Q. Okay.
7 A. It's not a figure that is used with any real
8 scientific support. It's just a figure published by
9 the CDC, and if one looks into the data that's used to
10 calculate that number and all of the other risks that
11 are associated with the disease, it becomes pretty
12 obvious that it's a number that is not shrouded in good
13 scientific procedures.
14 Q. What's your number?
15 A. I don't have a number, and I don't think
16 there is a number.

17 Q. I want you to name one physician, one
18 scientist in America who is totally unconnected with
19 the tobacco industry, has never received funding from
20 the tobacco industry, who has publicly said about that
21 number approximately what you just said, which is that
22 it's nonsense. That's your bottom line. The 450,000
23 -- that 450,000 Americans die each year as a result of
24 cigarette smoking, your opinion is, and you've couched
25 it in a very lengthy answer, but your opinion is that

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1 number is nonsense?

2 A. That number is a calculated number and it
3 does not have anything to do with actual death.

4 Q. And I want to know, I want you to name for us
5 one physician, one scientist who agrees with that.

6 A. And you excluded everybody that has ever done
7 anything for the tobacco industry?

8 Q. Yes.

9 A. Which leaves only one group of people, which
10 is the Public Health Service group and the antismokers.

11 Q. Just give --

12 A. There isn't anybody else.

13 Q. What about just an average doctor with a
14 private practice in hundreds of communities across
15 America?

16 How many Americans are killed by cigarette
17 smoking every year?

18 A. That's an imponderable question.
19 Nobody dies of cigarette smoking. You die of
20 diseases.
21 Q. How many Americans per year die of diseases
22 caused by cigarette smoking?
23 A. I don't think any of them die of diseases
24 caused by cigarette smoking.
25 Q. Zero?

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1 A. If they do, I think it's an unproven case.
2 Now I can't exclude the possibility, as I've said
3 before, but certainly I don't think you can conclude
4 that "X" number of people die of cigarette smoking or
5 the diseases associated with it.
6 Q. Okay. So your number is zero? I mean I just
7 heard your answer, and I just want -- your number is
8 zero?
9 A. I think my number is: I don't know if any
10 do.
11 Q. Okay. But on the other hand, since your
12 testimony throughout the day has been that maybe
13 cigarette smoking does cause cancer, and we know that a
14 lot of Americans die of cancer, that if we carry that
15 out logically, then your answer must necessarily be
16 maybe a lot of Americans die from cancer caused by
17 cigarette smoking.
18 Isn't that logical?

19 Maybe?

20 A. Well, I've said maybe in the sense that I
21 don't know whether tobacco smoking is a cause of
22 disease. Until you reach that conclusion, it's a
23 nonsensical calculation or nonsensical statement. Do
24 people die of something that you don't know?

25 Q. And it's equally ridiculous, equally

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1 ridiculous in your judgment for the Surgeon General and
2 the U.S. Public Health Service and the Centers for
3 Disease Control, it's equally ridiculous and
4 preposterous for them to say that 450,000 Americans die
5 every year as a result of cigarette smoking?

6 A. I think it's totally unsupportable.

7 I think that it is a nice way to provide a
8 warning to people to try to get them to give up
9 smoking, and I think that has been the genesis of that
10 number, for that purpose, and that's the purpose to
11 which I believe it's being used.

12 Q. On a logical basis -- and I would like an
13 answer to this specific question -- you've said over
14 and over again today, maybe cigarette smoking causes
15 lung cancer. Certainly you will concede that a certain
16 number of people who get lung cancer die, therefore --
17 and you said about your own father, that maybe his lung
18 cancer was caused by his cigarette smoking.

19 So my question to you simply is --

20 A. I think I said in that case I don't know.

21 Q. Would you agree that The New England Journal
22 of Medicine is as prestigious a medical journal that
23 exists in this country?

24 A. It's a prestigious journal.

25 Q. Now, you testified during your 1994

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1 deposition in this case that you read the two-part
2 article in the New England Journal of Medicine which
3 appeared on March 31, 1994, and April 7, 1994.

4 And I'm asking you whether you agree with the
5 concluding statement in the journal article from April
6 7, 1994, which says as follows --

7 On Page 980, these statements appear, and I'm
8 going to read them to you and ask you at the end
9 whether you agree or disagree.

10 Okay. Dr. Spears, I'm quoting: Tobacco use
11 has exacted a tragic toll on the United States
12 population. Every segment of our society suffers the
13 consequences of these addictive products, including
14 disproportionate affects on children, women and
15 minorities. The human and economic costs of tobacco
16 use to our society are overwhelming.

17 A uniform ban on tobacco advertisements and
18 increase in the number of laws against smoking in
19 public places, more aggressive public education and a
20 higher tax on cigarettes would diminish some of the

21 human tragedies of tobacco use.

22 You don't agree that -- unquote. You don't
23 agree that tobacco use causes any human tragedies, do
24 you?

25 A. No, I do not.

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1 I have total sympathy for an individual who
2 has contracted lung cancer, suffering through that
3 disease, but do I believe that cigarette smoke has been
4 shown to be the causative factor in that disease, the
5 answer is no.

6 Q. And therefore --

7 A. Certainly not on -- as you talk about
8 individual cases, no.

9 Q. And therefore -- well, whether I'm talking
10 about on individual cases or collective cases, if I
11 gave you a whole hospital ward of lung cancer patients
12 who were all heavy smokers, your answer would be the
13 same, whether it's a hundred or whether it's one?

14 A. No, I'm saying that risk factors or
15 associations don't really relate to individuals. They
16 relate to groups.

17 Q. But in any event, your conscience is clear?

18 A. My conscience is clear, yes.

19 Q. Even though maybe --

20 A. Well, I can say --

21 Q. Even though maybe the person laying in the

22 hospital bed dying of lung cancer from smoking
23 cigarettes, maybe that agonizing death was caused by
24 the smoking, according to your testimony? Maybe yes;
25 maybe no?

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1 A. You can raise a maybe about anything.
2 If you're a food manufacturer, maybe it was
3 because of the food you processed.
4 (The videotape was concluded.)
5 MR. NEWSOM: That's it.
6 THE COURT: That completes it.
7 Okay. Well, we have a couple more.
8 MR. ROSENBLATT: Judge, I want to put into
9 evidence the exhibits that were discussed and
10 identified during Dr. Spears --
11 THE COURT: All right. Let's have the clerk
12 mark them.
13 MR. NEWSOM: We said the other day, Your
14 Honor, we want to discuss those.
15 THE COURT: We'll mark it at this point for
16 identification purposes. But put the sticky on there
17 as to what it refers to, you know, submitted in the --
18 MR. ROSENBLATT: In other words, I have the
19 number given during the deposition where I would say
20 this was Exhibit 1 or 4.
21 THE COURT: Just put a sticky on there so
22 that we know that packet is from the Spears deposition.

23 MS. LUTHER: Actually, Judge, I think you
24 already have a packet from the Spears depo.
25 THE COURT: I don't know.

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1 MS. LUTHER: We do. We left it on Olga's
2 desk saying set it aside.
3 THE COURT: We did that on Friday.
4 MR. NEWSOM: Yes.
5 THE COURT: All right. If it's the same
6 thing, we've already done it, because I didn't want to
7 get that confused with some other depositions.
8 Okay. Let me talk with the lawyers for a
9 second.
10 You folks take a breather. Stand up,
11 stretch, do whatever you want to do.
12 (Discussion off the record.)
13 THE COURT: We're going to need something
14 like five, ten minutes or so. Do you want to wait here
15 or do you want to wait in there? Oh, maybe you'll wait
16 in there.
17 (The jurors exited the courtroom.)
18 THE COURT: Okay. Robin, do I understand
19 that the second McAllister '93 depo, the one that I
20 have --
21 MS. BERGER: The one that I just gave you --
22 THE COURT: -- has got all of the items you
23 want to --

24 MS. BERGER: That's not the one I gave you.
25 It has a binder clip on it.

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1 THE COURT: This has got a binder.
2 MS. BERGER: No, binder clip.
3 THE COURT: A binder clip?
4 MS. BERGER: Right.
5 THE COURT: Oh, this is the one.
6 MS. BERGER: Right.
7 THE COURT: So that doesn't have as much
8 stuff in it?
9 (Discussion off the record.)
10 (Recess)
11 THE BAILIFF: All right. Let's take our
12 places.
13 THE COURT: All right. I have just been
14 given as homework, a deposition of Arnys, A-r-n-y-s,
15 Lilly, L-i-l-l-y, Bernard Appleton.
16 MR. KIRBY: What was the first one, Your
17 Honor?
18 THE COURT: Lilly, Appleton, Frank Gullotta,
19 G-u-l-l-o-t-t-a, and let's see. Who is this? Lance
20 Reynolds? I guess that's him. I guess Lance Reynolds.
21 It starts with cross examination. I don't understand
22 that. All right.
23 So this, if I go through this stuff, will
24 take us up to the end of the week. I also have

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1 the other one, the '93. We've done Spears. I've got
2 Horrigan. I'm holding that one. Gertenbach I've done,
3 and Holbrook, so we have three that we could work with.

4 MR. HEIM: And the three we can work with are
5 which three?

6 THE COURT: Horrigan, Gertenbach and
7 Holbrook.

8 MR. HEIM: Okay. It would be helpful to know
9 where Your Honor thinks you want to go immediately
10 after those three, because some of these, since we
11 weren't sure and didn't know which ones you were being
12 given, there may -- I know there's at least one of them
13 which I believe the counterdesignations were not given
14 to the plaintiffs. Now they may have gotten to them
15 over the weekend. I'm not sure.

16 MS. BERGER: Which ones?

17 MR. HEIM: Lilly --

18 MS. BERGER: I don't have it. If you can
19 give it to me, I'll take his back --

20 MR. HEIM: I believe I saw a letter this past
21 weekend from our camp to their camp which says we gave
22 you these. You apparently don't have them. We're
23 giving you a set again. So, until we can catch up
24 between the two of us, we might as well hold them off
25 rather than have you read them twice.

1 THE COURT: Well, the one that's Reynolds has
2 so few designations and only plaintiffs' yellow
3 designations, and there are very few of those.

4 MR. HEIM: Okay. That's Lance Reynolds?

5 THE COURT: Yes, Lance Reynolds.

6 MR. HEIM: Are there counterdesignations?

7 MR. KIRBY: No objections, no
8 counterdesignations?

9 MS. BERGER: No. We haven't received any
10 yet. But since the Judge was asking for depositions,
11 if I didn't receive it, which were the last three that
12 I've given to him, I gave it to him anyway.

13 MR. HEIM: In view of what Robin just said,
14 take the last three, until tomorrow morning and we can
15 straighten this out, and don't bother reading those
16 because there's likely counterdesignations that she
17 doesn't have.

18 THE COURT: I don't have them in here.

19 MR. HEIM: Right. I don't want to put the
20 Court to reading them twice, is what I'm saying.

21 THE COURT: You're so thoughtful. No, I just
22 wanted something to work with to finish out the week.

23 MR. HEIM: So, if you put those three
24 aside --

25 THE COURT: I have four.

1 MS. BERGER: But Gullotta is done.

2 THE COURT: So, Gullotta is done?

3 MS. BERGER: Correct.

4 MR. HEIM: Correct.

5 THE COURT: So that should take us through
6 the week.

7 MR. HEIM: Right.

8 MR. SCHNEIDER: Your Honor, with respect to
9 Mr. Reynolds and D. Appleton, we had gotten a letter
10 from the plaintiffs indicating they were going to
11 narrow their designations. We should be able to give
12 them tomorrow or tomorrow afternoon our objections and
13 designations, one set that we can give to you that will
14 cover them both.

15 THE COURT: Then I won't need these.
16 Somebody can take these, color code them, if you will,
17 or use your color codes, if you will.

18 MS. BERGER: Thank you.

19 THE COURT: Thank you. I've got enough here
20 that I think we can go through the -- okay.

21 All right. What we'll do is we'll start
22 with --

23 MR. ROSENBLATT: Horrigan.

24 THE COURT: -- Horrigan, and we'll run until
25 5:00 and finish up the rest of it tomorrow.

1 MR. HEIM: Okay.

2 MR. ROSENBLATT: That means you'll have to be

3 here in the morning, Jerry.

4 MR. SILVERMAN: That's all right. I was

5 supposed to feed the homeless at 5:15 today, so if you

6 get me out at five, that would be terrific.

7 THE COURT: You're feeding the homeless?

8 MR. SILVERMAN: Yes. Once a month we feed

9 the homeless at our temple, but that's not until 5:15.

10 THE COURT: If you want to get out early, let

11 me know.

12 MR. SILVERMAN: No, that's fine.

13 MR. HEIM: That's very nice, but it doesn't

14 sound like Horrigan.

15 THE COURT: Okay. Let's get the jury out.

16 Can you come back tomorrow and finish?

17 MR. SILVERMAN: Yes. What time tomorrow?

18 THE COURT: We'll let you know.

19 MR. SILVERMAN: Yes. Tomorrow morning is

20 fine.

21 THE COURT: Probably 9:30.

22 MR. SILVERMAN: That's fine. No problem.

23 THE BAILIFF: Bringing in the jury.

24 (The jurors entered the courtroom.)

25 THE COURT: All right. We're going to now

1 switch over to a Mr. -- Doctor?

2 MS. LUTHER: Mr.

3 MR. ROSENBLATT: Horrigan, Edward Horrigan,
4 H-o-r-r-i-g-a-n.

5 THE COURT: Okay. And we may not finish his
6 deposition today.

7 Whatever we don't finish today, we'll pick up
8 tomorrow.

9 MR. ROSENBLATT: His deposition, Judge, was
10 taken in Winston-Salem, North Carolina, June 29, 1994.
11 Beginning on Page 4:

12 (The deposition of Edward A. Horrigan, Jr.,
13 was read to the jury as follows:)

14 Q. Tell me your name and address, please, sir.

15 A. Edward A. Horrigan, Junior,
16 [DELETED].

17 Q. What is your position currently with Liggett?

18 A. I'm chairman of the Liggett Group.

19 Q. Since when?

20 A. Since the 1st of June.

21 Q. And do I understand correctly that most of
22 your career in the tobacco business was with Reynolds?

23 A. Yes.

24 Q. All right. Tell me about your history with
25 Reynolds starting at the beginning until you left

1 Reynolds.

2 A. Okay. Most of this will be as precise as I
3 can make it with dates.

4 Q. Sure.

5 A. I joined Reynolds on July 1st, I think, of
6 '78, as chairman and chief executive officer of
7 Reynolds Tobacco International, responsible for all
8 international operations.

9 In January 1st of '80, I was made chairman
10 and chief executive officer of R.J. Reynolds Tobacco
11 Company U.S. after relinquishing for about 18 months
12 for international, while I focused on domestic.

13 Then I believe some time in '81 I was named
14 an executive vice-president of the parent corporation,
15 R.J. Reynolds Industries, that is, continued as
16 chairman and CEO of Reynolds Tobacco but resumed
17 responsibility for Tobacco International.

18 Later on in '82 or 3, I was given the
19 responsibility for Hubline after we acquired Hubline,
20 continuing with Reynolds Tobacco Domestic and
21 International.

22 In '84, I was named president and chief
23 operating officer of R.J. Reynolds Industries and
24 assumed responsibilities for all of the operating
25 businesses of R.J. Reynolds Industries, Tobacco,

1 Hubline, Del Monte and so on.

2 In May or June of '85, I was named a vice
3 chairman of R.J. Nabisco when we acquired Nabisco, kept
4 tobacco, Hubline, relinquished Del Monte to the food
5 side of our business, and that was '85.

6 1986, continued as vice chairman of the
7 board. We regrouped again, tobacco and food, bylines
8 of business, and my responsibilities then were Domestic
9 Tobacco, Tobacco International, Planters, Life Savers,
10 which we left with our tobacco operation, integrated
11 it, R.J. Reynolds Tobacco Development Company,
12 responsible for all government affairs and those sorts
13 of activities, until the buyout occurred. And then
14 when the buyout occurred, I left in February of '89.

15 Q. Under what circumstances did you leave?

16 A. The buyout was one by the Kravis Group, and
17 my situation was that I was in a position, the number
18 two guy before the buyout. And if I was not a
19 candidate for the number one job, then I said I would
20 not continue to run the tobacco and the Planters
21 business under this new ownership and they picked
22 Gerstner to run RJR Nabisco and I resigned and retired.

23 MR. ROSENBLATT: Page 8, Line 6:

24 Q. Who was it who invited you to come with
25 Liggett?

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1 Was that LeBow?

2 A. A combination. LeBow and a fellow that
3 worked for me before at Reynolds Tobacco, an associate
4 of mine who was a consultant to them on the Russian
5 side of the business, and they asked him if he could
6 persuade me to get active again and help out.

7 Q. And who was that?

8 A. A fellow by the name of Rubin Chakalian.

9 Q. Is he with Liggett now?

10 A. Yes, he is.

11 Q. In what capacity?

12 A. We just gave him the CEO position. He was a
13 consultant for me and a fellow director.

14 Q. Now, you said you were basically hired to see
15 if you could salvage the situation at Liggett.

16 What was the situation at Liggett that needed
17 salvaging?

18 A. Basically everything. They were on the brink
19 of -- they were on the brink of filing for bankruptcy
20 in the spring of '93, critically short of cash, high
21 cost, low volume, declining volume trend, loss of
22 credibility with the banks, the bond holders and the
23 trade.

24 Other than that, they had no problems.

25 Q. Other than that, they were in great shape?

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1 A. They were in great shape.

2 Q. Have you salvaged the situation?

3 A. Yes, we have. We dramatically increased the
4 unit volumes in the second half of last year and the
5 first half of this year over last. We reduced our
6 costs significantly, reduced GNA significantly. My
7 presence helped with the customers, the trade, that I
8 was back in the business. We got some additional
9 financing. I would say we were quite successful.

10 Q. Now, when you say you dramatically increased
11 the unit volumes, referring to the sale of cigarettes?

12 A. Yes, that's all Liggett is now, is just a
13 cigarette company.

14 MR. ROSENBLATT: Page 10, Line 14:

15 Q. So, after your graduation from the University
16 of Connecticut, trace for me, if you will, your
17 employment history leading up to Reynolds and Liggett
18 which we have already talked about.

19 A. In June of '50, I was recruited by and
20 employed by the United States Army as a regular Army
21 infantry officer serving in the Korean war and served
22 until March of 1954, resigned my commission and then
23 went with Proctor & Gamble from '54 to '58.

24 MR. ROSENBLATT: Page 11, Line 22:

25 Q. Are you a smoker?

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1 A. No.

2 Q. Ever smoke?

3 A. Never smoked in my life.

4 Q. That's amazing. You've been around
5 cigarettes --

6 A. I was around booze, but I managed that as
7 well.

8 Q. I assume you drank from time to time?

9 A. Yes.

10 Q. Never had one cigarette and inhaled it in
11 your entire life?

12 A. If I go back maybe when I was 12, like
13 everyone else, I tried it, didn't like it, so I never
14 smoked again. Never even tried. I had no interest.

15 Q. Was any kind of philosophy attached to it,
16 your decision not to smoke?

17 A. I didn't like the taste of it. Same thing
18 with coffee. I didn't like and still don't like the
19 taste of coffee. I don't drink coffee and don't smoke.

20 MR. ROSENBLATT: Page 15, Line 21:

21 Q. What are the Liggett premium brands, if I'm
22 using the term correctly, as opposed to the cheap brand
23 or discount brand?

24 A. The Liggett premium brands are Chesterfield,
25 Lark, L&M, and Eve. Eve in the U.S. only.

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1 Q. Which is the best seller out of those?

2 A. Eve is the best seller.

3 MR. ROSENBLATT: Page 18, Line 24:

4 Q. Were you involved with advertising when you

5 were with Reynolds?

6 A. I approved advertising and promotions,
7 overall strategy and directions, yes.

8 Q. Reynolds was and is heavily into advertising,
9 aren't they?

10 A. They were and still are a major force, yes.

11 Q. Obviously Marlboro is the brand that is
12 advertised most in the country in terms of cigarettes.

13 What is your understanding of the next brand
14 in terms of an advertising budget?

15 A. I haven't tracked budgets for the last 18
16 months, so I can't accurately answer what is the number
17 two brand in terms of advertising support.

18 Q. Well, not holding you to it, but what's your
19 sense of some of the brands that advertise very, very
20 heavily?

21 A. In no particular order, probably Winston,
22 Newport, Camel.

23 Q. Were you involved in any way in the Joe Camel
24 campaign when you were at Reynolds?

25 A. Yes.

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1 Q. In what way?

2 A. I was the one that more or less directed the
3 management then of the U.S. company to look at the Joe
4 Camel idea for the United States market.

5 Q. You liked it?

6 A. It worked for us in International.

7 Q. It was tried first internationally?

8 A. The campaign then was tried internationally

9 and was in place internationally, yes.

10 Q. Now when you say "internationally," what

11 countries in particular?

12 A. Most specifically France at that time.

13 Q. And it was the same kind of thing as the

14 American advertising that we see for Joe Camel?

15 A. Not today. This is the extent from where we

16 were then.

17 Q. Okay. Who originated the Joe Camel idea?

18 A. I think it was some agency that we were

19 dealing with in either France or Germany that came up

20 originally with the idea.

21 Q. Now you mentioned shelving.

22 What does that mean in the context of your

23 industry?

24 A. You pay the retailers for space that you

25 occupy on the carton racks in the stores. You have

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1 annual contracts. You pay so much for the shelving by

2 brand, by shelf, quarterly and annually.

3 Q. Are there some locations that cost more than

4 other locations in terms of the shelving?

5 A. Not really. It's the carton racks that are

6 located in the stores, and the amount increased the

7 more you go up on the carton rack in terms of preferred
8 location.

9 Q. And you mentioned trade allowances.

10 How is that phrase used in your industry?

11 A. Trade allowances, I call it trade and
12 consumer coupon promotions, free packs, et cetera.

13 Q. How heavy is Liggett into that?

14 A. Competitively?

15 Q. Competitive with Marlboro.

16 A. Competitive with the other companies given
17 our size.

18 Q. When you were with Reynolds, did you work
19 closely with the present CEO, Mr. Johnston?

20 A. I recruited him.

21 Q. From where?

22 A. He was with Northwest Industries. He was a
23 vice-president of marketing at Union Underwear, as I
24 remember.

25 Q. You recruited him for what position

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1 specifically?

2 A. CEO, Ocean Pacific, located in Hong Kong.

3 Q. Did you work closely together during your
4 tenure at Reynolds?

5 A. Yes, quite closely.

6 Q. Okay. As I understand it from his
7 deposition, he left the company because of a

8 disagreement with you; is that accurate?

9 A. He left the company because of a disagreement
10 with me and several other senior executives.

11 Q. A disagreement over what?

12 A. Strategy.

13 Q. What strategy?

14 A. Brand strategy for domestic tobacco.

15 Q. What was your position and what was his
16 position on that issue? You know, these are
17 generalities, brand strategy?

18 A. In brief, at that time we had about 31
19 percent share of the market in total, made up of
20 Winston, Salem, Camel, Doral. It was his vision that
21 he was going to replace the entire 31 share points with
22 all new brands, free-standing new brands, like
23 Rosenblatt, like Horrigan.

24 Q. Free-standing new brands?

25 A. We said we didn't think it could be

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1 accomplished, to say the least.

2 Q. He was going to get rid of all those
3 well-known brands?

4 A. He felt they had to be replaced, they were
5 tired and worn out and we had to contemporize the
6 Reynolds' product.

7 Q. How long was that issue debated in-house?

8 A. Not very long.

9 Q. I take it that he was alone in that view?
10 A. Lonely.
11 Q. Has anything like that ever been done in the
12 industry, the tobacco industry, you get rid of
13 well-known brands that have been around for many years
14 and come up with totally new names?
15 A. Not really. Brands evolve in the industry.
16 It wasn't long ago that Chesterfield was the biggest
17 brand. My father smoked Chesterfields. The brands
18 move in cycles as they do.
19 For example, in the spirits business, they
20 come into favor, they fall out of favor, and they
21 almost never come back, almost never come back.
22 The idea of replacing in this competitive
23 industry an entire array of brands with contemporary
24 new brands was just, we thought, reaching.
25 Q. Well, when you say that the brands that are

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1 very, very popular and then they fall out of favor and
2 they almost never come back, isn't the attempt, the Joe
3 Camel campaign, an attempt to reverse that?
4 A. Yes. And it's almost historic in that it has
5 come back. It hasn't doubled or tripled the share, but
6 it was going the other way and that reinvigorated the
7 brand.
8 Q. Does your research give you any explanation
9 for that, why a brand will be super popular for a while

10 and then, for no discernible reason, it's not popular
11 anymore?

12 Do you have a grasp or an understanding of
13 that?

14 A. You do consumer research to see what is
15 appealing to people in terms of brand strategies, and
16 that's about all you can do. You either are on target
17 or not with the audience that you are appealing to,
18 that you are advertising to.

19 Q. Marlboro has been number one for how many
20 years?

21 A. I can't remember accurately.

22 Q. A long time?

23 A. Twenty years.

24 MR. ROSENBLATT: Line 16:

25 Q. Okay. I'm talking to a guy that knows the

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1 tobacco business as good as anyone in America probably.
2 Anyone in the street realizes that Marlboro advertises.
3 They maintain the motif of the cowboy, and I'm asking
4 you, is Marlboro the number one cigarette in America
5 because it tastes better than the other cigarette,
6 because it's milder, or because they just hooked into
7 this great advertising campaign?

8 A. I think it's a combination of many, many
9 events at a time in the industry when a brand could, if
10 they were successful, could, let's say, reaffirm or

11 gain a stronger position.

12 Marlboro, those of us who look back, would
13 say that the campaign that they had for Marlboro at the
14 time that cigarettes were banned from television, was
15 more easily transferred into print and outdoor and had
16 the lead on other market leading brands at that time in
17 terms of the ability to take that message and move into
18 other forms of advertising. That gave Marlboro, then,
19 a very big advantage.

20 MR. ROSENBLATT: Page 28, Line 5:

21 Q. How many discount labels does Liggett have?

22 A. Oh, about 25 to 30. I can't answer that
23 exactly because we make brands for a range of
24 customers. So if you take all those brands where they
25 are owned by Liggett for provided to major customers,

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1 it's in the range of about 25 brands.

2 Q. Are those 25 brands all priced just about the
3 same?

4 A. Basically.

5 Q. And what is that price now?

6 A. I don't have that pricing at the top of my
7 mind right now.

8 Q. Give me your best estimate.

9 A. I would prefer not to, and I'm not being
10 secretive. I don't have a number that I would be
11 comfortable in giving. It's about 25 cents less than

12 our premium brands.

13 Q. What do your premium brands cost? What does
14 a pack of Chesterfields cost nowadays?

15 A. You mean sales price to our customers?

16 Q. To me going --

17 A. I don't have that price on the top of my
18 mind. I really don't. I don't deal with it, so I
19 don't worry about it.

20 Q. When did the -- when did the discount brands
21 come into vogue? When did that become a significant
22 factor in the tobacco industry?

23 A. Around 1978.

24 Q. Which was the first company that did it?

25 A. Liggett was the first.

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1 Q. What was the thinking behind that?

2 A. Liggett was losing share dramatically and
3 cigarettes were continuing to increase in price by
4 taxation and manufacturing increases and they thought
5 there was a place in the marketplace for a private
6 label brand of cigarette.

7 Q. Were they right?

8 A. Yes.

9 Q. Every company eventually went into the
10 discount market?

11 A. Yes.

12 Q. Which company is the heaviest into the

13 discount market?

14 A. At the moment, R.J. Reynolds.

15 MR. ROSENBLATT: Page 30, Line 12.

16 MS. LUTHER: There's a cross-designation
17 starting on 25, Stanley, and then all of Page 30 is in.

18 MR. ROSENBLATT: Starting on what line?

19 MS. LUTHER: Page 29, Line 25.

20 MR. ROSENBLATT: Okay.

21 Q. Now when you say private label brands, how is
22 that term being used?

23 A. Distinguished from a private label from a
24 brand that a manufacturer has. A manufacturer can come
25 out with a price brand he owns and creates or he can

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1 supply a brand if the brand is owned by, for example,
2 Winn Dixie or Flemming, and Flemming may own the brand
3 name, and they can have any one of the manufacturers
4 produce the brand.

5 Q. Is that how it is with Liggett's 25 or so
6 discount brands?

7 A. Yes.

8 Q. So, in other words, those brands are not
9 owned by Liggett or they are?

10 A. Most of them are owned by Liggett. Some are
11 owned by the customers.

12 Q. Give me an example of some of the customers.

13 A. Winn Dixie owns their brand. Flemming owns

14 the brand, but we make them for them. We own the brand
15 for Ralph's Food Markets. So those are examples of the
16 difference.

17 Q. That dispute that we were discussing before
18 with Johnston, when he was with Reynolds and you were
19 with Reynolds, did he quit voluntarily or was he fired?

20 A. He was fired.

21 Q. And who made that decision?

22 A. Three of us.

23 Q. You and who else?

24 A. Jerry Long and Ty Wilson.

25 Q. Why was it necessary to fire him? You have a

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1 lousy, bizarre idea. We don't like it. Go on to
2 something else. Why fire him?

3 A. He was executive V.P. of marketing for the
4 domestic company and he had lost considerable support
5 in the ranks below him, people who reported to him and
6 had a major working relationship problem with the CEO
7 of the domestic company, Jerry Long, who reported to
8 me. He was twice removed from me.

9 Q. So, what was the circumstance where he came
10 back and is now the CEO?

11 A. The circumstance, I think, was that K.K.R.
12 was looking for an experienced tobacco executive and he
13 was presented, I guess, to the company, and they
14 recruited him and hired him.

15 MR. ROSENBLATT: Page 32, Line 2:

16 Q. What do you think of that policy, obviously a
17 new policy where the tobacco industry decided to fight
18 back and get aggressive?

19 A. To answer the first part of the question,
20 what do I think of the strategy? I applaud it.

21 Q. In what sense do you applaud it?

22 A. The industry continues to be pilloried in the
23 press, television, and there are two sides to all
24 issues, and to me, it's the most effective way for the
25 industry to communicate to the public at large the

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1 tobacco industry's desire on some of these sides.

2 Q. Aren't there some issues where there is only
3 one side?

4 A. Not in my opinion.

5 Q. So, why isn't Liggett doing the same thing?
6 Why aren't you taking similar ads?

7 A. I would say right now, two reasons: One is
8 we still don't have the resources to put such a program
9 in the marketplace. And secondly, I believe that
10 Reynolds and Philip Morris on their own are doing a
11 splendid job in terms of the industry.

12 Q. You think their approach is sound in those
13 ads?

14 A. Yes.

15 Q. Does cigarette smoking cause cancer?

16 A. Not in my opinion.
17 Q. What is that opinion based on?
18 A. The fact that, while there continues to be
19 statistics that underline the issue or the problem,
20 there is -- there still has been no scientific link
21 that says there is a direct cause-and-effect
22 relationship.
23 Q. Does cigarette smoking cause any disease?
24 A. Not in my opinion.
25 Q. Based on the same reasoning you just gave?

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1 A. Fundamentally.
2 Q. Who is the top science person at Liggett?
3 A. Greg Sulin is our top operations and research
4 and development executive -- correct that, he's a group
5 executive now. He was head of R&D. John Woods is the
6 head of research and development.
7 MR. ROSENBLATT: Page 34, Line 21:
8 Q. How many people do you think cigarette
9 smoking kills?
10 MR. SILVERMAN: What line are you on?
11 MR. ROSENBLATT: Line 21 on Page 34:
12 A. I don't know if cigarette smoking directly
13 kills anybody.
14 Q. So the warning that appears on your products
15 which say that smoking causes lung cancer, heart
16 disease, emphysema, and may complicate pregnancy, to

17 you, essentially, is a false statement?

18 A. I am not saying it's a false statement. It's
19 a position taken by the governmental authorities and
20 required on all cigarette packs, and we comply with the
21 laws.

22 MR. ROSENBLATT: Going to Line 16:

23 Q. The statement, the warning that you put on
24 your packages says: Smoking causes lung cancer. You
25 believe that to be an untrue statement?

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1 A. That's a statement from the Surgeon General.

2 Q. I understand that. You believe it to be an
3 untrue statement, don't you?

4 A. I don't believe that basic fact.

5 MR. ROSENBLATT: Page 36, Line 6:

6 Q. Do you have research on this question as to,
7 let's say, the Joe Camel campaign?

8 Would you be able to estimate, based on any
9 kind of research, how many Marlboro smokers, for
10 example, switch to Camels as a result of the Camel
11 advertising campaign?

12 A. Not now.

13 Q. You had it at one time?

14 A. At Reynolds, we had more capability in terms
15 of research than we have at Liggett.

16 Q. When you were at Reynolds, did you have a
17 handle on that?

18 A. You had a directional handle on brand
19 switching.

20 Q. Okay. And what was the directional handle
21 you had at that time on brand switching?

22 A. That the Camel campaign was attracting the
23 young adult male smoker.

24 Q. The young adult male smoker, but you didn't
25 have a handle on which brands they were switching from?

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1 A. Not accurately.

2 Q. Did you have a handle on or research on the
3 issue of how many nonsmokers become smokers as a result
4 of advertising?

5 A. Ask that again, the question again, please.

6 Q. Did you have a handle on or research on the
7 issue of how many nonsmokers become smokers as a result
8 of advertising?

9 MR. SILVERMAN: You lost me. What line are
10 you on?

11 MS. LUTHER: 11.

12 MR. ROSENBLATT: You go to Line 11:

13 A. Not that I can remember.

14 Q. Well, what's your expert opinion on that?

15 A. Well, implicit in your question is, do we
16 have any evidence about those ads inducing nonsmokers
17 to smoke?

18 Q. Correct.

19 A. And there is no fundamental basis for that at
20 all.

21 Q. There is no fundamental --

22 A. Cigarette advertising does not induce people
23 to smoke. You make your own decisions. Then you make
24 a brand choice once you decide to smoke. You do not
25 bring people into the smoking public with advertising.

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1 Q. What do you base that on?

2 A. Just the knowledge of the business, the
3 knowledge of why people smoke, how they chose to smoke
4 in the first place.

5 Q. Well, isn't it true that the whole discount
6 trend demonstrates in a very dramatic way that all this
7 talk about brand choice is just a lot of nonsense
8 because millions of smokers switched to other brands
9 for one reason only: They were cheaper; isn't that
10 true?

11 A. The basic success of discount brands was the
12 economics of the situation.

13 MR. ROSENBLATT: Page 39, Line 15:

14 Q. Okay. Isn't it a fact that in the tobacco
15 industry, with the popularity of discount brands,
16 wouldn't you agree that millions of smokers switched
17 brands for one consideration only: Price?

18 A. I would say the major contributing factor to
19 the price value brand was price, no question about it,

20 amongst the smoking public.

21 Q. Okay. Well, is it your understanding that
22 the average discount brand -- let's talk about Liggett.
23 You tell me that there are about 25 discount brands.

24 If you put any one of the discount brands up
25 against the premium brands such as Chesterfield and

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1 Eve, is it not your opinion that Chesterfield and Eve
2 are higher quality than all the discount brands in
3 terms of taste and mildness?

4 A. The premium brands are made with more
5 expensive tobaccos, and in terms of true taste, in all
6 probability, would deliver a better tasting cigarette
7 than a price value cigarette.

8 Q. And nonetheless, millions of people switched
9 to the discount brands. So my question to you is:
10 Other than price, is there any other reason in your
11 opinion why they switched to the cheaper brand?

12 Certainly not for better taste?

13 A. I think they made a decision based upon
14 economics purely.

15 MS. LUTHER: 47, Stanley.

16 MR. ROSENBLATT: Are you sure?

17 MS. LUTHER: Yes.

18 MR. ROSENBLATT: Page 47, Line 5.

19 MS. LUTHER: Line 5.

20 Q. Now let me ask you this question: I

21 understand what you've said about advertising. Will
22 you concede that there are a certain number of people
23 who are nonsmokers who saw a Marlboro ad or a Camel ad
24 or some other kind of ad, liked what they saw, and
25 decided to smoke as a result of seeing that ad, or do

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1 you take the position that's never happened in the
2 history of cigarette advertising?

3 A. You have asked me two questions. I'll try to
4 answer them both. The first question is -- the answer
5 is no.

6 The second question, I don't know in the
7 entire history of cigarette smoking whether an ad has
8 induced a person who never smoked in his life to take
9 up the practice of smoking.

10 I would say I would not concede that
11 advertising induces people to smoke. Take me as a
12 classic example, and I'm a marketing man. I'm the
13 author of advertising for cigarettes, and I don't
14 smoke. Nothing induced me to smoke. I've chosen not
15 to smoke.

16 MR. ROSENBLATT: Page 49, Line 3:

17 Q. You are not willing to concede that cigarette
18 smoking has caused lung cancer in a single individual,
19 are you?

20 A. Cigarettes could be a risk factor for some
21 people, but cigarettes are not a direct contributing

22 link to that disease.

23 MR. ROSENBLATT: Page 51, Line 9:

24 Q. My question to you is: Do you concede that
25 there are some people who are smokers who sincerely

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1 want to quit smoking for health reasons or for other
2 reasons and are simply unable to do so?

3 A. I will not concede that. None of us know all
4 the things that contribute to human behavior. A person
5 can say they want to quit and they can't, but who says
6 they really fundamentally want to quit?

7 I'm just giving you my own views on this. I
8 would like not to have a drink every night before
9 dinner, but do I have a drink every night before
10 dinner? Yes, I do.

11 MR. ROSENBLATT: Page 52, Line 24:

12 Q. I believe you said you authored certain
13 cigarette advertising.

14 A. Well, what I meant was working on the Joe
15 Camel campaign and bringing that over here.

16 MR. ROSENBLATT: Line 21 on Page 53:

17 Q. Have you ever known a smoker who told you
18 that they tried to quit and couldn't?

19 A. You hear many people in the smoking
20 population say: I really would like to stop smoking,
21 but I can't.

22 My point, again, is human behavior. You

23 don't know what motivates a person, just like I want to
24 jog every day, but I don't. So I take it in that same
25 sense.

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1 MR. ROSENBLATT: Page 55, Line 10:

2 Q. Okay. What would it take to convince you
3 that cigarette smoking causes cancer?

4 Can you, in your own mind, come up with an
5 experiment or a piece of data which would cause you to
6 say to yourself: Well, you know, that does it. I was
7 wrong all these years. It does cause it?

8 A. It seems you have asked about three questions
9 there. But what it would take to convince me is if a
10 member of the scientific community came forth with an
11 absolute causal establishment of cigarettes or
12 something in cigarettes causing any of those diseases.

13 MS. LUTHER: Jumps to 62.

14 MR. ROSENBLATT: Page 62, Line 5:

15 Q. Before the break, you were talking about
16 scientists who have publicly gone on the record
17 discussing basically the same general opinion that the
18 tobacco industry always expresses and that is that
19 causation has not been established.

20 Give me the names of some of those
21 scientists.

22 A. I can't. I cannot recall all the names of
23 the scientists. There have been so many over the

24 years. One in particular that I recall was Dr. Glenn
25 who I think has been involved in the industry in recent

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1 months, but I can't recall the other names of the other
2 doctors.

3 MR. ROSENBLATT: Page 63, Line 19:

4 Q. My question is whether or not you can name
5 any medical doctor or scientist who has never received
6 any money from the tobacco industry, who has publicly
7 stated or publicly written that it has not been
8 established that cigarette smoking causes cancer and
9 other diseases?

10 A. I cannot give you the names of any scientists
11 that even have been retained or independently put
12 forward a position on the issue that you are talking
13 about.

14 Q. Can you, for example, without perhaps knowing
15 the name, tell me which university a person is
16 affiliated with or what publication someone might be
17 affiliated with that has taken the same position that
18 the tobacco executives have taken?

19 A. It's been several years since I've been
20 involved in that community, so I cannot name schools or
21 universities with any accuracy.

22 Q. Is it your impression that this is still very
23 much of an open question as to whether or not causation
24 has been established?

25 A. I still believe it's an open question.

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1 Q. And the fact that every Surgeon General in
2 the last 30 years, Republican and Democrat, has said
3 very forcefully and very clearly that cigarette smoking
4 causes cancer, have you ever thought: How have they
5 gotten it so wrong? How come they don't understand, in
6 your opinion?

7 A. In my opinion, the --

8 Q. That it's an open question?

9 A. In my opinion, the Surgeon General Reports
10 over the many years continue to go back to studies, and
11 there is nothing new that ever comes out in these
12 reports that I am aware of. And for that reason, I
13 still don't see any breakthrough or know of any
14 breakthroughs that give them a stronger position.

15 Q. So what you're saying is that, from the
16 standpoint of the science, and from the standpoint of
17 the issue of causation, we are pretty much today where
18 we were back at the time of the first Surgeon General's
19 Report in 1964?

20 A. I think there is more, let's say,
21 understanding as time passes with this issue as there
22 is with many other issues. We know that people believe
23 that cancer can be induced by stress. And I'm sure
24 that there are probably people where cigarette smoking
25 could be a risk factor, but we don't know what that

1 risk factor is, just as we don't know what diet is or
2 hereditary factors.

3 These are all the things that go into the
4 contributing factors to major disease. But I can't
5 single out one particular product like this and say
6 that is, in fact, what causes cancer or heart disease
7 or emphysema.

8 Q. But, in general, to get back to my original
9 question, in terms of the science, it's your
10 understanding on the issue of causation, does cigarette
11 smoking cause cancer and other disease, we are pretty
12 much today where we were 30 years ago in terms of a
13 real clear scientific understanding of that issue?

14 A. I don't know of anything new that has come
15 forward.

16 MS. LUTHER: 77.

17 MR. ROSENBLATT: Page 77, Line 11:

18 Q. There is a statistic which one constantly
19 hears about, the number of smokers who have quit
20 smoking.

21 What is your understanding of what that
22 number is?

23 A. I do not know the market research basis on
24 how that was determined, but I do know that the number
25 that people use in this industry is that over 40

1 million people have stopped smoking.

2 Q. Over what period of time?

3 A. I don't know the span of time.

4 Q. Why do you think 40 million people have quit
5 smoking?

6 A. It's a matter of choice. I think people
7 conclude over time either they would prefer not to
8 smoke anymore. They enjoyed it while they did it, but
9 they give it up, and there is (sic) a day that doesn't
10 go by that you don't meet people who have voluntarily
11 chose to stop smoking.

12 Q. Do you think most of those 40 million have
13 quit smoking because they have become convinced smoking
14 is bad for their health?

15 A. I think they make their decisions based on
16 their own lifestyle. Perhaps even the social pressures
17 that go on with regard to smoking. But I can't
18 attribute it to any one factor as to why people give up
19 the practice of smoking.

20 Q. How many new smokers start smoking every day
21 in America?

22 Do you have any idea?

23 A. I have no idea.

24 Q. You have never seen any research on that?

25 A. No.

1 Q. When you were at Reynolds, were there
2 memorandums and correspondence and discussions about
3 how to make a particular brand, brand of cigarette
4 particularly attractive to a particular ethnic or
5 racial group?

6 A. Not that I recall.

7 Q. You can't remember ever sitting in on such a
8 meeting or issuing such a memorandum yourself?

9 A. Not with regard to ethnic or racial appeal,
10 no.

11 MR. ROSENBLATT: Line 9 on Page 79:

12 Q. When do most people start smoking, take up
13 the habit?

14 A. I believe, from my own personal observation,
15 that most people start smoking when they are in their
16 early teens.

17 By start, I mean experiment or whatever.

18 Q. Well, many of them, like in your experience,
19 they experiment, they don't like it, and they don't go
20 back to it. Many experiment, like it, and just become
21 smokers, right?

22 A. For whatever reasons, they take up smoking.

23 MR. ROSENBLATT: Page 83, Line 2:

24 Q. Do you have any idea how many children begin
25 smoking every day?

1 A. None whatsoever.

2 MR. ROSENBLATT: The next area changes the
3 subject, Judge.

4 THE COURT: All right. This is a good place
5 to break. Okay. We'll take our usual evening break,
6 get you back here at 9:15 tomorrow morning. We'll,
7 hopefully, get underway at 9:30.

8 Okay. Same rules apply, folks.

9 (The jurors exited the courtroom.)

10 MR. ROSENBLATT: So, obviously, we'll finish
11 up with this first thing.

12 THE COURT: We'll finish this up and go into
13 another one and after that, another one, and after
14 that, another one.

15 Okay.

16 MR. ROSENBLATT: Thank you, Judge.

17 THE COURT: We'll see you folks tomorrow.

18 MR. HEIM: Just in case you want to have more
19 reading, but this is on a different subject, I did find
20 the memorandum on the Death in the West thing.

21 THE COURT: Oh, okay.

22 MR. HEIM: So I have the original for Olga,
23 one for Your Honor.

24 THE COURT: My understanding of the Death in
25 the West issue is that he just wants to take the

1 snippets of the spokespeople and use just that --

2 MR. HEIM: Right.

3 THE COURT: -- without any of the --

4 MR. HEIM: I understand that too.

5 MR. ROSENBLATT: That's been done already.

6 MR. HEIM: And this memo is intended to show

7 Your Honor why that would be improper.

8 THE COURT: Okay.

9 MR. HEIM: Okay?

10 THE COURT: Okay.

11 (Court was adjourned at 4:55 p.m.)

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